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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,171	07/17/2003	Donald L. Meyer	58631/10	7595

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NEW YORK, NY 10016

EXAMINER

SLACK, NAKO N

ART UNIT PAPER NUMBER

3635

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,171

Applicant(s)

MEYER, DONALD L.

Examiner

Naoko Slack

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendments to the specification and claims have been entered.

Claims 1-15 are pending and an examination of these claims follows.

Response to Remarks

Applicant's Remarks have been carefully considered.

The amendments to claims 1 and 15 introduce new matter.

Specifically, claims 1 and 15 have been amended to include that the base layer is "substantially non-compressible". Applicant states that this feature is evident from the listing of materials on page 6, lines 7-9. On page 6, lines 7-8, the specification states that "Preferred materials for base layer 20 include the flexible foams formed of polyethylene..." There is no disclosure to indicate that the material is non-compressible. Furthermore, flexible foams formed of polyethylene are well known in the art to be compressible; therefore, the original disclosure does not support the new feature of a base layer being "substantially non-compressible", and therefore, this feature comprises new matter that has not been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,162,566 to Katz in view of US Patent 4,590,714 to Walker.

Claim 1:

Katz discloses a thermally insulative and waterproof barrier for protecting an exterior surface, comprising a generally rectangular flexible blanket (column 1, lines 47-53), said blanket defining a central body and a peripheral margin about edges of said body, said body including at least one base layer of thermal insulation (11) and two cover layers of waterproof material (10), said cover layers being sealed together peripherally about said base layer in a substantially gas-tight relationship (heat-sealed, column 2, lines 21-25) to form said peripheral margin and to exclude water and water vapor from said base layer.

While Katz does not specify that edges of adjacent blankets overlap to cover the surface to be protected, Walker teaches thermally insulative and waterproof blankets for protecting an exterior surface wherein edges of the adjacent blankets overlap and connect to each other (Figure 3). As would be obvious to one of ordinary skill in the art at the time the invention was made, connecting adjacent blankets together accommodates larger surfaces to be protected.

Claim 2:

Walker teaches that the adjacent blankets are disposed with edges forming a pair of mutually overlapping edges (Figure 3).

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Claim 3:

In a large surface covering comprising multiple blankets, a centrally located blanket may have all four edges overlapping the edges of adjacent blankets, as Walker teaches grommets on each edge of the blanket (Figure 1).

Claim 4:

The peripheral margin of Katz's blanket is heat-sealed (column 2, lines 21-25).

Claims 5, 6 and 9:

While Katz and Walker do not specify the exact dimensions of the overlapping edges to be 1.5 inches and not more than 4.0 inches, or that the blanket has a thickness of not more than 1.5 inches, such dimensions are matters of obvious design choice to one of ordinary skill in the art. The blankets must have enough space for the edge connection without severely reducing the area in which insulation exists, and the blanket should not be too thick so as to hinder the workability and ease of placement on a structure.

Claim 7:

Walker teaches grommets (41) extending through said peripheral margin of each blanket, and securing means (column 2, lines 55-58) extending through at least some of said grommets for securing each said blanket to one of a substrate, a structural frame and another blanket.

Claim 8:

Katz discloses that the blanket is sufficiently flexible to be rollable into a generally cylindrical configuration (column 2, lines 46-53).

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Claim 11:

Katz's waterproof material (10, Figure 1) is sheet-like.

Claim 12:

Katz's waterproof material is moisture-proof (column 1, line 69).

Claim 13:

While Katz does not specify that the blanket material is impervious to soil gas, Katz's blanket is formed with waterproof material which is moisture-proof and impervious to water vapor. Since soil gas comprises water vapor and larger molecular gases such as methane, Katz's blanket would also be impervious to soil gas.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,162,566 to Katz in view of US Patent 4,590,714 to Walker as applied to claim 1 above, and further in view of US Patent 6,329,038 to Christoffersen.

Claim 10:

While Katz and Walker do not specify that the thermal insulation includes a metalized surface, Christoffersen discloses an insulative blanket with two covers layers surrounding an interior insulative material, in which the covers are insulative metal sheets, such as aluminum foil (column 4, lines 11-12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have or include a metalized cover layer, as this material is insulative and impermeable, properties desired by Katz and Walker.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,162,566 to Katz in view of US Patent 4,590,714 to Walker as applied to claim 1 above, and further in view of US Patent 6,261,397 to Repp et al.

Claim 14:

While Katz and Walker do not disclose fixation means extending through the blanket body, Repp et al. discloses a blanket with two outer cover layers, an interior layer, and a plurality of fixation means (5) extending through the blanket body to fix the relative position of the interior relative to the cover layers. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a fixation means with a blanket having an interior material that may be likely to shift.

Claim 15:

Katz discloses a thermally insulative and waterproof barrier for protecting an exterior surface, comprising a generally rectangular flexible blanket (column 1, lines 47-53), said blanket defining a central body and a peripheral margin about edges of said body, said body including at least one base layer of thermal insulation (11) and two cover layers of waterproof material (10), said cover layers being sealed together peripherally about said base layer in a substantially gas-tight relationship (heat-sealed, column 2, lines 21-25) to form said peripheral margin and to exclude water and water vapor from said base layer. Katz discloses that the blanket is sufficiently flexible to be rollable into a generally cylindrical configuration (column 2, lines 46-53).

While Katz does not specify that edges of adjacent blankets overlap to cover the

surface to be protected, Walker teaches thermally insulative and waterproof blankets for protecting an exterior surface wherein edges of the adjacent blankets overlap and connect to each other (Figure 3). As would be obvious to one of ordinary skill in the art at the time the invention was made, connecting adjacent blankets together accommodates larger surfaces to be protected.

Walker teaches that the adjacent blankets are disposed with edges forming a pair of mutually overlapping edges (Figure 3). In a large surface covering comprising multiple blankets, a centrally located blanket may have all four edges overlapping the edges of adjacent blankets, as Walker teaches grommets (41) on each edge of the blanket (Figure 1). Securing means (column 2, lines 55-58) extend through at least some of said grommets for securing each said blanket to another blanket.

While Katz and Walker do not specify the exact dimensions of the overlapping edges to be 1.5 inches and not more than 4.0 inches, or that the blanket has a thickness of not more than 1.5 inches, such dimensions are matters of obvious design choice to one of ordinary skill in the art. The blankets must have enough space for the edge connection without severely reducing the area in which insulation exists, and the blanket should not be too thick so as to hinder the workability and ease of placement on a structure.

FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose current telephone number is 571-272-6848. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Naoko Slack', with a long horizontal line extending to the right.

Naoko Slack

Patent Examiner

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NS,

May 3, 2005